

The Honorable Christopher M. Alston  
Chapter: 7  
Hearing Date: December 15, 2017  
Hearing Time: 9:30 a.m.  
Hearing Location: Seattle, WA  
Response Date: December 8, 2017

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re:

TOC Holdings Co., fka Time Oil Co.,

Debtor.

Case No. 17-11872-CMA

**TRUSTEE'S MOTION TO AUCTION  
VEHICLES**

COMES NOW Edmund J. Wood as trustee ("Trustee") for the bankruptcy estate of TOC Holdings Co., fka Time Oil Co. (the "Debtor") by and through his counsel Foster Pepper PLLC and hereby moves this Court for an order pursuant to 11 U.S.C. § 363(b)(1), (f), 11 U.S.C. § 704 and 11 U.S.C. § 105 authorizing him to two vehicles free and clear of liens, claims and encumbrances as follows:

**I. AUCTION OF CERTAIN PROPERTY BY JAMES G. MURPHY COMPANY  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

James G. Murphy Company, Inc. ("JGM") was hired by order of this Court dated October 13, 2017. *See* Dkt No. 179. The Trustee proposes that JGM be permitted to auction two vehicles constituting property of the estate (the "Property").

The auction will be a live auction conducted on February 10, 2018 at JGM's offices located at 18226 68<sup>th</sup> Ave., NE, Kenmore, WA 98028. *Wood Dec.*, ¶ 4. It is the Trustee's position that the sale Property is in the best interest of creditors and the estate. *Wood Dec.*, ¶ 11.

MOTION - 1

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1           1.     **Nature of the Property.** The Property to be sold consists of two vehicles as  
2 follows:

3                 2013 Toyota Tundra VIN 5TFUY5F1XDX272740; and

4                 2013 Chev Equinox LTZ, VIN 2GNFLGEK2D6199402. *Wood Dec.*, ¶ 3.

5           2.     **Purchase Price and Terms.** The Property will be sold at auction for the highest  
6 and best offer with 10% of the proceeds being paid as a commission to JGM. *Wood Dec.*, ¶ 5.

7 In addition, JGM will be reimbursed for any costs associated with the sale of the Property. *Wood*  
8 *Dec.*, ¶ 6.

9           3.     **Identity of Purchasers.** The buyers at the auction are not known at this time.  
10 *Wood Dec.*, ¶ 7.

11           4.     **Contingencies.** There are no contingencies for the auctions. *Wood Dec.*, ¶ 8.

12           5.     **Condition of Title.** The Trustee believes that Property is unencumbered. *Wood*  
13 *Dec.*, ¶ 10.

14           6.     **Utilization of Proceeds.** The Trustee requests that he be permitted to hold the  
15 proceeds from the sale in his trust account pending further order of this Court. *Wood Dec.*, ¶ 13.

16           7.     **Benefit to the Estate.** The net proceeds will be available to pay claims filed in  
17 this case. *Wood Dec.*, ¶ 11.

18           8.     **Authority to Sell.** Under 11 U.S.C. § 363(f), a trustee is authorized “to sell  
19 property under section (b) or (c) of this section free and clear of any interest in such property of  
20 an entity other than the estate, only if . . . (2) such entity consents; . . . (4) such interest is in bona  
21 fide dispute; or (5) such entity could be compelled, in a legal or equitable proceedings, to accept  
22 money in satisfaction of such interest.”  
23  
24  
25  
26

MOTION - 2

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1 Here, the Trustee does not anticipate any objection to his request that the auction be free  
2 and clear of liens, claims and encumbrances since the Property is unencumbered. *Wood Dec.*, ¶  
3 10.

4 Courts have discretion in considering sales and apply the “best interests of the estate”  
5 test.  
6

7 In approving any sale outside the ordinary course of business, the court must. . .find it is  
8 in the best interest of the estate, i.e., it is fair and reasonable, that it has been given  
9 adequate marketing, that it has been negotiated and proposed in good faith, and that it is  
an “arm’s length” negotiation.

10 *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr.C.D.Cal. 1991).

11 Here, it is the Trustee’s position that the value of the Property can be maximized by  
12 having JGM take possession of, stage and advertise the Property for auction at a minimum cost  
13 to the estate. *Wood Dec.*, ¶ 9. The Trustee believes the auction will maximize the value of the  
14 Property. *Wood Dec.*, ¶ 11.

15 Accordingly, the Trustee respectfully requests that the Court approve the sale of the  
16 Property described herein free and clear of liens, claims and encumbrances with such liens,  
17 claims and encumbrances, if any, and replaced by an identical priority lien in the proceeds from  
18 the sale of the Property that are encumbered by such liens, claims and encumbrances, if any.  
19

20  
21 DATED this 22<sup>nd</sup> day of November, 2017.

22 FOSTER PEPPER PLLC

23 /s/ Deborah A. Crabbe

24 Deborah A. Crabbe, WSBA #22263

25 Bryan T. Glover, WSBA #51045

26 Attorneys for Trustee Edmund J. Wood

MOTION - 3

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